

Applicant : Jim Azzar  
Serial No. : 10/659,861  
Page : 6

REMARKS

Applicant acknowledges the Examiner's review of the specification, claims, and drawings. In light of the amendments and following remarks, Applicant respectfully requests reconsideration of the present application. The amendments and remarks presented herein are fully supported by the application as originally filed. No new matter has been entered.

STATUS OF THE CLAIMS:

Claims 1, 2, 4, and 6-21 are pending in the application. Claims 3, 5, and 22-25 have been previously cancelled.

CLAIM REJECTIONS UNDER 35 U.S.C. 102:

The Examiner rejects Claims 1, 2, 4, 6, 7, 11-16, and 18-20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,781,374 to Walker.

Applicant respectfully traverses. Initially, Applicant notes that none of the Claims 1, 2, 4, 6, 7, 11-16, and 18-20 recite an "intended use". A recitation of intended use appears in the form of "use for . . ." In this case, an intended use would appear in the form "a tray for use as a human food tray" or "a tray for holding human food" or some other variation thereof. In contrast, Applicant recites "a human food serving tray assembly", which is a positive recitation of the object itself that is being claimed, namely a human food serving tray assembly. Notwithstanding, Applicant has amended Claims 1 and 11 to recite the human food serving tray in the body of the claim. Claims 1 and 11, therefore, now positively call for a human food serving tray assembly that includes a human food serving tray. Applicant respectfully urges that Walker does not disclose or suggest a human food serving tray assembly with a human food serving tray having a bottom wall and a sidewall

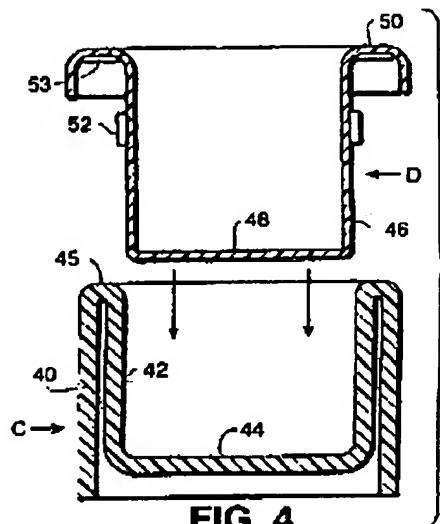
Applicant : Jim Azzar  
 Serial No. : 10/659,861  
 Page : 7

extending up from the bottom wall to form a cavity, in combination with a preformed flexible paper liner, which is configured and arranged to substantially conform to the inner surfaces of the bottom wall and the sidewall of the tray to form a liquid containing bowl for holding food and liquid, for example. Nor does Walker disclose or suggest the bottom wall forming the support surface of the tray. The Examiner identifies FIG. 4 as disclosing the claimed invention.

Assuming that numeral 44 represents the bottom sidewall, then Walker does not disclose the bottom wall providing the tray on a work surface. Walker has a completely different invention. Further, Walker is directed to a food trough for animals. Accordingly, Applicant respectfully submits that Claims 1 and 11 and their respective dependent claims, namely Claims 2, 4, 6, 7-10, and 12-17, are patentably distinguishable over Walker alone or in view of any other reference of record.

Accordingly, Applicant respectfully submits that Claims 1 and 11 and their respective dependent claims, namely Claims 2, 4, 6, 7-10, and 12-17, are patentably distinguishable over Walker alone or in view of any other reference of record.

With respect to Claim 18, Applicant respectfully urges that the Examiner has failed to establish anticipation of the claim. In order to establish anticipation of the claim, each and every limitation of the claim must be found in a single prior art reference. A claim is anticipated if only each and every element as set forth in the claim is found in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987).



Applicant : Jim Azzar  
Serial No. : 10/659,861  
Page : 8

Moreover “[t]he identical invention must be shown in as complete detail as contained in the claim.”

*Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 U.S.P.Q.2d 1931, 1920 (Fed. Cir. 1989). All words in a claim must be considered in judging patentability of a claim against prior art. *In re Fine*, 873 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); *In re Wilson*, 424 F.2d 1382, 165 U.S.P.Q. 494 (CCPA 1970).

As noted above, Claim 18 does not recite an intended use—instead it recites a human food serving tray assembly or—it recites the thing itself. Further, Walker does not disclose or suggest a human food serving tray assembly that includes a plastic tray having a wall forming a generally planar base wall for resting on a support surface and forming a perimeter wall extending around and up from the base wall in combination with a preformed flexible paper base liner. Therefore, Applicant respectfully urges that Walker does not anticipate Claim 18. The Examiner's analysis ignores the claim language. In each of the embodiments disclosed in the Walker reference, the walls that the Examiner likens to or associates with the base wall of the claimed invention, is suspended above the lower most portion of the trough as seen in FIGS. 2, 3, 4, 7, and 8. Therefore, Walker's base wall does not rest on a support surface.

Applicant : Jim Azzar  
 Serial No. : 10/659,861  
 Page : 9

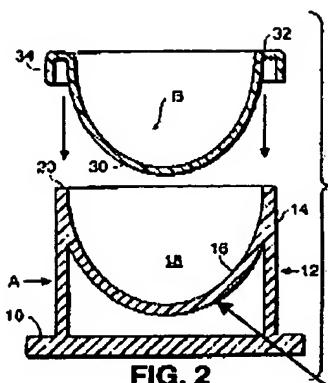


FIG. 2

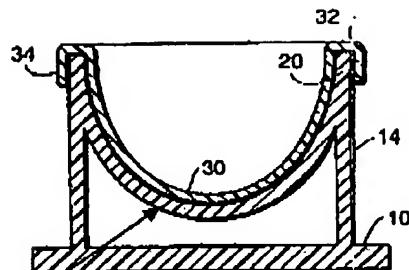


FIG. 3

Base wall

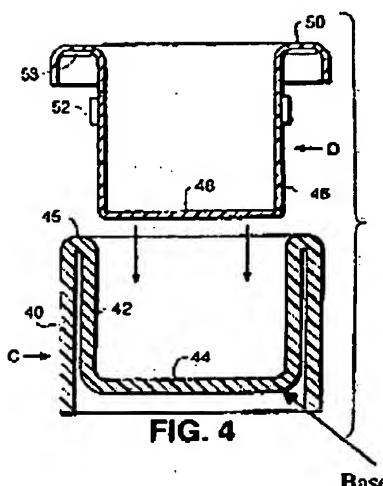


FIG. 4

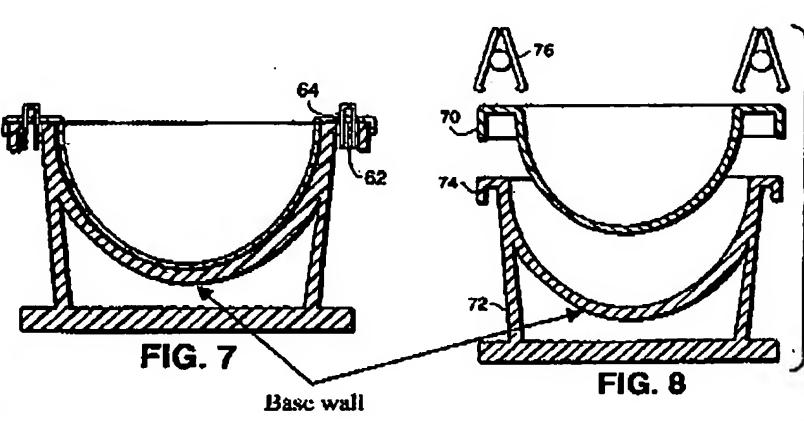


FIG. 7

Base wall

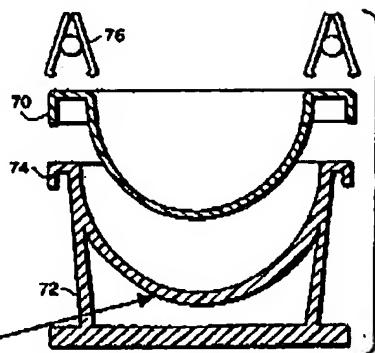


FIG. 8

Base wall

Figure 5 merely illustrates a plurality of stacked and nested liners. Therefore, Applicant respectfully urges that the Examiner has failed to establish anticipation of Claim 18 and, further, failed to establish that Claim 18 is not patentable over the prior art.

Therefore, Applicant respectfully submit that Claim 18 and its dependent claims, namely Claims 19 and 21, are patentably distinguishable over Walker alone or in combination with any other reference of record. Further, since the Examiner has failed to establish a prima facie case

Applicant : Jim Azzar  
Serial No. : 10/659,861  
Page : 10

of anticipation of Claim 18, Applicant respectfully requests that the Examiner reconsider the rejection of Claim 18 and its dependent claims.

In light of the above amendments and remarks, Applicant respectfully solicits a Notice of Allowance of all claims.

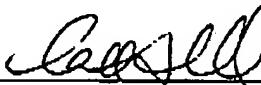
Should the Examiner have any questions or suggestions, the Examiner is invited to contact the undersigned at (616) 975-5506 or at [collins@vglb.com](mailto:collins@vglb.com).

Respectfully submitted,

JIM AZZAR

By: Van Dyke, Gardner, Linn & Burkhart, LLP

Date: September 15, 2006

  
\_\_\_\_\_  
Catherine S. Collins  
Registration No. 37 599  
2851 Charlevoix Drive, S.E., Suite 207  
P.O. Box 888695  
Grand Rapids, Michigan 49588-8695  
(616) 975-5506

CSC:lmsc